In the High Court of Punjab and Haryana at Chandigarh

…

FAO.No.777 of 1987

Date of decision: 1.11. 2006

The New India Assurance Co. Ltd. ..Appellant

Versus

Jagdev Singh and others ..Respondents

Coram: Hon'ble Mr.Justice M.M.Kumar

Present: Mr.Neeraj Khanna,Advocate
for the appellant
Mr.Munish Bhardwaj,Advocate
for the respondent-claimant.

M.M.Kumar,J.

This is an appeal filed under Section 100-D of the Motor Vehicle Act,1939 by New India Assurance Company challenging the award dated 27.4.1987 of the Motor Accident Claims Tribunal, Rupnagar. The Tribunal has awarded a sum of Rs.23,000/- for the injury suffered by the claimant-respondent in a motor vehicular accident, which had taken place on 14.8.1986 at Zirakpur Chowk near Aero Drum in the area of Police Station Sohana District Ropar. The claimant-respondent has suffered permanent disability to the extent of 30 %. A meagre sum of Rs.5000/- for care and carriage charges have been awarded, Rs.3000/- as future expenditure on account of the treatment, which was still being carried on. For pain and sufferings, again Rs.5000/- has been assessed and whereas for permanent disability of 30 % Rs.5000/- has been granted. The claimant-respondent has also been given interest at the rate of 12 % P.A. from the date of filing the petition till its realization.

When the appeal came up for consideration, Mr.Neeraj Khanna,Advocate counsel for the appellant-Company has argued that there is no insurance cover on record and the Tribunal has erroneously held that the insurance has not been denied by the appellant-Insurance Company. On that basis the Tribunal has considered the vehicle as insured and has held the appellant-Insurance Company as liable severally and jointly with the owner and

driver.

Mr. Munish Bhardwaj, learned counsel for the claimant-respondent has pointed out that another appeal namely, FAO No.792 of 1987 is also pending and deserve to be decided. He further pointed out that in para 15 of the reply to the claim petition, the driver and owner,i.e.,respondent Nos.2 and 3 have pointed out that the particulars of Insurance Company of the offending truck had already been furnished in the Court separately and the only objection taken by the appellant-Insurance Company is that no insurance cover has been produced, therefore, the appellant-Insurance Company was not liable to pay any compensation under the Motor Vehicle Act,1939. It was further asserted by the appellant-Insurance Company that if at any stage, a copy of the insurance policy is produced, then the appellant-Insurance Company would file a fresh written statement whereas respondent Nos.2 and 3,.i.e., the truck driver and owner respectively have categorically asserted the factum of insurance so it was on the aforementioned basis that the Tribunal has recorded the conclusion that the factum of insurance has been admitted. In that regard, my attention has been invited to the observation of the tribunal in para No.25 of the award.

Having heard the learned counsel for the parties, I am of the view that the appellant-Insurance Company cannot dispute either the factum of accident or the factum of insurance of the offending truck. The instant appeal is pending since 1987 and recovery has been stayed since then. There is no application filed by the appellant-Insurance Company under Order 41 Rule 27 of the C.P.C. for bringing on record any other document showing that the insurance policy had expired before the date of the accident. Therefore, at this stage, the appellant-Insurance Company cannot be permitted to dispute the finding with regard to the factum of accident or the fact that the offending truck was insured with the appellant-Insurance Company. The tribunal cannot be considered to be wrong when on the basis of the pleadings of the parties, it has been concluded in para No.25 as under:-

> “25. In the final analysis, in view of the observations made above, compensation to the tune of Rs.23,000/- is awarded to the

claimant, although interest at the rate of 12 % per annum from the date of petition till realisation. The award is given against the respondents whose liability would be joint and several, as the vehicle viz. truck No. PAT 8147 was alleged to be insured with the New India Assurance Company, Chandigarh-respondent No.3,vide insurance No.4562200073 and the said fact could not refuted by the other party viz. Insurance Company, whereas respondent No.1 and 2 did not come to challenge the averments made in the petition after filing written statement. The award is given accordingly. Memo. of costs be prepared. File be consigned to the record room."

In view of the above, the appeal of the appellant-Insurance Company fails and the same is dismissed. However, the question of quantum of compensation is to be decided in the appeal filed by the claimant-respondent in FAO No.792 of 1987 which has been heard today but the orders have been reserved. Therefore, dismissal of the instant appeal should not be considered to mean that the award of the Tribunal has been upheld in all respect.

November 1,2006 (M.M.KUMAR)
nk JUDGE